

section may be granted if the person receiving the survey or other request for information:

(i) Has no physical presence in the United States of any kind;

(ii) Does not provide, produce, distribute, utilize, procure, research, develop, consult or advise on, or have any other direct or indirect association with the materials, products, services or technology that are within the scope of the survey;

(iii) Has ceased business operations more than 12 months prior to receipt of the survey;

(iv) Has been in business for less than one year; or

(v) BIS determines that extenuating circumstances exist that make responding impractical.

(2) BIS may also grant an exemption if, based on the totality of the circumstances, it concludes that compliance would be impractical and/or that requiring compliance would be unduly time intensive.

(3) Existence of a pre-existing private non-disclosure agreement or information sharing agreement between a person and another party (*e.g.*, customers, suppliers, etc.), does not exempt a person from the obligation to comply with and complete a survey. The authority to conduct the survey and comply with the survey is derived from the DPA, and that statutory obligation to comply supersedes any private agreement.

(c) *Extensions of time to complete.* A person who receives a survey or other request for information may request an extension of time to submit the complete response to BIS. BIS may grant such an extension of time, if, in its judgment, circumstances are such that additional time reasonably is needed, the extension would not jeopardize timely completion of BIS's overall analysis, and the person is making reasonable progress towards completing the survey or response to the other request for information. Generally, extensions will be for no more than two weeks. A person who receives a survey or other request for information may request successive extensions if the person believes that it continues to have a legitimate need for additional time to complete the survey. BIS will not grant extensions that would jeopardize

the performance and timely completion of its industrial base assessments.

(d) *Procedure for requesting exemptions or extensions of time.* Requests for exemptions or extensions of time must be made to BIS at the telephone number, email address or BIS physical address provided in the initial distribution letter for a survey or in the other request for information. A request for an exemption must provide factual information and documentation that are adequate for BIS to determine that one or more of the criteria stated in paragraph (b) or (c) of this section are met.

(e) *Responses that are incomplete or inadequate.* BIS may return responses that are incomplete or inadequate to the person for prompt completion. BIS will specify the required period of time permitted for completion and submission of the revised survey.

§ 702.5 Consequences of failure to comply.

(a) *Civil.* If any person fails to comply with the requirements of § 702.4, BIS may issue a subpoena requiring that person to submit the information called for in the survey. In the case of contumacy or refusal to obey such a subpoena, the U.S. Government may apply for an order by the United States district court in a district where that person resides or transacts business that would compel the person to submit the completed survey.

(b) *Criminal.* In accordance with 50 U.S.C. app. 2155, any person who willfully fails to comply with § 702.4, may, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both.

§ 702.6 Definitions.

The definitions in this section apply throughout this part.

Confidential. A description of information that is subject to the disclosure prohibitions of the DPA (50 U.S.C. app. 2155(d)).

Initial distribution letter. A letter that BIS sends to a person that has been identified by the U.S. Government as a supplier or customer of materials, products or services used for activities of the industry that is the focus of a

survey. The letter describes the survey's primary objectives, how survey results will assist the U.S. Government, and the confidential treatment of the information submitted. The letter also includes BIS contact information.

Person. The term "person" includes:

(1) An individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof;

(2) Any State or local government or agency thereof;

(3) The Government of the United States, of the District of Columbia, of any commonwealth, territory or possession of the United States, or any department, agency or commission thereof.

NOTE TO THE DEFINITION OF "PERSON." Paragraph (1) of this definition is not limited to commercial or for-profit organizations. For example, the term "any other organized group of persons" may encompass labor unions, academic institutions, charitable organizations or any group of persons who are organized in some manner. The term corporation is not limited to publicly traded corporations or corporations that exist for the purpose of making a profit.

Survey. A questionnaire or other request for information that collects detailed information and data to support both the assessment of a particular industrial sector or technology and the development of a corresponding study.

SUPPLEMENT NO. 1 TO PART 702— GENERAL SURVEY INFORMATION

This supplement provides general information about surveys and the content of the typical survey. The content of this supplement is purely an example of a typical survey, and in no way limits the content that may appear in a specific Bureau of Industry and Security (BIS)-issued survey. Procedures and content vary from survey to survey, and as such, there is no set template to follow. Nonetheless, BIS is offering this information as a basic guide to some elements of a survey.

Survey Structure

Most surveys include the following sections: Cover Page; Table of Contents; General Instructions; Glossary of Terms; Organizational Information, and sector-specific sections.

—The cover page typically includes the title of the survey, its scope, an explanation

of the legal requirement to comply, the burden estimate for compliance with the survey, the Office of Management and Budget (OMB) control number, and the survey date of expiration.

—The General Instructions section normally includes process steps necessary for a person's survey submittal. These include but are not limited to instructions for survey completion, survey support staff point-of-contact information, the name and address of the presiding BIS official, and instructions for both survey certification and submittal.

—The Glossary of Terms section explains terms contained in the survey. Terms contained in the survey may be unique to the subject matter of the industry assessment, and therefore may change in meaning from survey to survey. Therefore, it is important to follow the specific instructions and defined terms contained in the specific survey you receive, regardless of any previous survey you might have completed.

—The Organization Information section requests information related to the person in receipt of the survey, including address information, the source level of response (*e.g.*, facility, business unit, division, corporate consolidated, etc.), point of contact details, and other pertinent contact information.

The survey is generally organized in a question and answer format and is presented on an electronic survey system. Each survey is specially tailored to collect the specific information requested. Therefore, specific detailed information is what should be submitted in response to a survey requesting such information.

—For example, if we ask for a listing of your customers that order widget A, your response should not be a listing of your entire customer base. Only the information pertaining to customers' ordering widget A is responsive to that kind of question.

Also note that your reply to a survey request is compulsory, unless you meet the criteria for exemption set forth in the body of the regulation. Therefore, any non-disclosure agreements or similar agreements you may have with your customers or clients are not applicable to a survey's request for information. Compliance with the survey is required by the DPA. Accordingly, compliance with that statutory requirement is paramount to any private agreement you have with your customers or other parties.

In addition to the aforementioned sections, each survey contains sections tailored to the specific scope of the study, including but not limited to Facility Locations, Products and Services, Inventories, Suppliers and Customers, Challenges and Organizational Outlook, Employment, Operations, Financial Statements, Sales, Research and Development, and Capital Expenditures.

Examples of survey terms.